

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/118/2024
WITH WP/52/2020
IA NO: GA/1/2024

THE BOARD OF MAJOR PORT AUTHORITY FOR THE SYAMA
PRASAD MOOKHERJEE PORT, KOLKATA AND ORS.

VS
PURBA MANDAL

...

APOT/120/2024
WITH WP/162/2020
IA NO: GA/1/2024

THE BOARD OF MAJOR PORT AUTHORITY FOR THE SYAMA
PRASAD MOOKHERJEE PORT, KOLKATA AND ORS.

VS
PURBA MANDAL

...

BEFORE :-
THE HON'BLE JUSTICE SOUMEN SEN
-A N D-
THE HON'BLE JUSTICE UDAY KUMAR
DATED : 16th April, 2024.

Appearance :-

Mr. Kallol Basu, Adv.
Mr. Ashok Kumar Jena, Adv.
Mr. Atreya Chakraborty, Adv.
...for appellants.
Mr. Joydip Kar, Sr. Adv.
Mr. Soumya Majumder, Adv.
Mr. Sourav Mukherjee, Adv.
Mr. Kaushik Mondal, Adv.
...for respondent.

Soumen Sen [Oral] : Delay of 43 days in preferring the present appeal is condoned.

The appellant is aggrieved by the common judgment and order dated 21.12.2023 passed by the learned single Judge by which the decision of the appellant in refusing to allow voluntary retirement and initiation of disciplinary proceeding for not resuming her work consequent upon such rejection were set aside. The appellants are aggrieved by both the judgments.

By consent of the parties both the appeals and the connected applications are taken up together as they involved any question of law and fact and disposed of by this common order.

Briefly stated, the writ petitioner applied for voluntary retirement on 3.10.2019 on and from 7.1.2020 [Afternoon] on completion of 30 years of service in Kolkata Port Trust [In short, KoPT] on 31.12.2019 in terms of clause 28 of KoPT Employees' Pension Regulation, 1988. The said regulation states as follows :

“28.Retirement on completion of 30 years, qualifying service.

(1) At any time after an employee has completed thirty years, qualifying service:

(a) he may retire from service or provided that-

(a) an employee shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire.”

In the said representation the writ petitioner has referred to clause 56[k] of the Fundamental Rules, which states as follows :

“56(k)(1) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group ‘A’ or Group ‘B’ service or post, (and had entered government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years.....”.

The writ petitioner attained the age of 50 years on 7.8.2018. She joined service of KoPT at the age of 21 years. She made a prayer for voluntary retirement in terms of regulation 28 read with clause 56[k] of the Fundamental Rules. The appellant though initially had consented and approved the request for voluntary retirement in terms of her application dated 3.10.2019, has subsequently retracted from its stand and refused

such prayer. In view of the fact that the appellant did not resume her duty consequent upon the subsequent rejection order disciplinary proceeding was initiated against the writ petitioner. In the first writ petition the writ petitioner challenged the refusal of the appellant to grant him voluntary retirement after it was accepted. The second writ petition was directed against the order of compulsory retirement on the ground of unauthorised absence from service as she did not resume her duty after her prayer for voluntary retirement was rejected.

Mr. Kallol Basu, learned counsel on behalf of the appellant has submitted that the aforesaid regulation does not give an absolute right to an employee of voluntary retirement on completion of 30 years. It is submitted that the employer reserves its right to deny such application even after completion of 30 years qualifying service and in the event regulation 28 is interpreted without recognising the right of the employer to refuse an application for voluntary retirement it would cause serious prejudice in carrying out administration. It is submitted that the proviso to Regulation 28 should be read harmoniously with the other provisions as the same may never be construed to be in derogation of the other clauses of the said Regulation.

Mr. Basu has urged that the import of regulation 28[1][a] and [b] would be that KoPT has the discretionary power to withhold permission with regard to prayer of an employee for voluntary retirement. The power of the Board to grant permission under regulation 28[1][b] would include its power to withhold the same. It is submitted that on a meaningful interpretation of the said Regulation as a whole would certainly give an impression that the Board is not denuded of its power to recall its decision of voluntary retirement and any construction that the voluntary retirement would be automatic by operation of law after expiry of 3 months notice period would defeat the particular purpose of the said regulation. Mr. Basu in this regard

has relied upon a decision of the Hon'ble Supreme Court in C.V. FRANCIS *Versus* UNION OF INDIA AND OTHERS reported in (2013) 14 SCC 486 paragraphs 13 and 14 to argue that voluntary retirement scheme does not entitle an employee as a matter of right to the benefit of the scheme unless representation is allowed or scheme itself provides for retirement would be effected on expiry of notice period.

Per contra, Mr. Kar, learned senior counsel appearing on behalf of the writ petitioner has supported the judgment of the learned single Judge and has argued that the right to the benefit of voluntary retirement accrues immediately on expiry of the period of 3 months. The petitioner has admittedly completed 30 years' of qualifying service and upon expiry of period of 3 months notice period she would automatically retire from service and it does not require any approval from the Board.

Mr. Kar has submitted that in accordance with the said regulation an employee who has completed 30 years of service may retire from service subject to his giving a notice in writing to the appointing authority at least three months before the date on which he/she wishes to retire under regulation 28[1][a] and once such application is made it does not require any approval of the appointing authority. The said regulations have not imposed any fetter upon an employee who has the qualifying period of service and also the qualifying notice period to his/her credit to again be subjected to any order of approval by the employer. To further qualify this point, Mr. Kar has referred to regulation 29A of 1988 regulation to submit that formal approval of the employer would be necessary in case an employee has to seek voluntary retirement after completion of 20 years of qualifying service. The absence of any provision for 'acceptance' in Regulation 28 makes it clear that no approval of the employer is necessary upon expiry of the notice period.

The learned single Judge in interpreting the aforesaid Regulations has held that on expiry of the period of 3 months the writ petitioner is entitled to voluntary retirement as she has completed 30 years of qualifying service.

In the background of the aforesaid facts, we are to review the impugned order.

The regulation 28 has two limbs. It gives right to the employee in regulation 28[1][a] to seek retirement from service on completion of 30 years' qualifying service. Simultaneously, in regulation 28[1][b] it gives the right to the board [employer] to retire an employee in the "Board's Interest" and in case of such retirement the employee shall be entitled to "a retiring pension". The right to retire an employee by the appointing authority in regulation 28[1][b] is akin to a retirement on public interest or a compulsory retirement with some terminal benefits. In the instant case the board has not exercised its power under Regulation 28[1][b].

There is another aspect of the matter which makes it clear that the Board could not have withheld the permission. The proviso to Regulation 28 states :

"Provided that –

- a. an employee shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and
- b. the appointing authority may also give a notice in writing to an employee at least three months before the date on which he is required to retire in the Board's interest or three months' pay and allowance in lieu of such notice. Provided further that where the employee giving notice under Clause[a] of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such an employee to retire under this regulation."

The proviso to Regulation 28 requires an employee to give a notice in writing to the appointing authority at least three months before the date on which he/she wishes to retire. The board has accepted the said letter and the matter is concluded. The communication is completed as regards the employee when she communicated her decision and as regards the board when it accepted the said letter. The question is whether after the acceptance of the said letter the board could have denied the application for voluntary retirement. The board after accepting the voluntary retirement in our view could not have recalled its decision as the proviso to Regulation 28 clearly indicates the circumstances where the board could withhold such permission.

The said proviso in clause [b] makes it clear that after receiving the notice under clause [a] the board may refuse to give permission if the employee was under suspension. It appears that before the writ petitioner applied for voluntary retirement an investigation was initiated against her but no punishment was awarded to her and she was advised to exercise caution and diligence in carrying out any duty of the trustees entrusted to her. This would be evident from the communication dated 19.11.2019 preceding her application for voluntary retirement. Mr. Basu could not show any provision other than to which we have referred to which could permit the employer to withhold the permission for voluntary retirement. In absence of any power and having regard to the fact that the writ petitioner has completed 30 years of qualifying service the appellant after having accepted the said application could not have specifically rejected the said order without showing any reason.

In paragraph 13 of C.V. FRANCIS (*supra*) it has been clearly held that whether an employee should be allowed to retire in terms of the scheme is a decision which can only be taken by the employer company, except in cases where the scheme itself provides for retirement to take effect when the notice

period comes to an end. In the instant case the regulation makes it clear that on expiry of notice period it would come to an end.

The appellant has to act within the four corners of the Regulation and cannot travel beyond it. It is not being urged that the appellant was involved in corrupt practices which fact was revealed after the appellant was allowed to retire from service upon completion of qualifying service for voluntary retirement. Moreover, the board has not exercised any power under regulation 28[1][b].

In view of the fact that the authorities could not have recalled its earlier order allowing the voluntary retirement the subsequent action of the appellant in proposing disciplinary proceeding and imposing punishment on the ground of unauthorised absence is clearly unsustainable in law and in fact.

On such consideration we affirm the order under appeal.

Both the appeals stand dismissed. However, there shall be no order as to costs.

(SOUMEN SEN, J.)

I agree.

(UDAY KUMAR, J.)